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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Revision of the Commission's Rules)

To Ensure Compatibility with)

Enhanced 911 Emergency)

Calling Systems)

CC Docket No. 94-102

DA 98-2631

UPSTATE CELLULAR NETWORK'S
REPLY TO COMMENTS AND RESPONSES IN OPPOSITION TO WAIVER
REQUESTS

Upstate Cellular Network¹ (hereafter "UCN" or "Petitioner"), by its attorneys, respectfully submits its reply to the comments and responses in opposition to the requests for a waiver of Section 20.18 of the Commission's Rules.²

I. UCN Has No Vested Interest in Either a Network-Based or Handset-Based Solution

Unlike the majority of parties who oppose a grant of the waiver requests,³ UCN has no vested interest in whether a network-based or handset-based solution is adopted. UCN is a multiple system licensee of both Metropolitan Service Areas (MSAs) and Rural Service

¹ UCN files this Waiver Request on behalf of itself, the licensee of the Buffalo, New York MSA and the Utica-Rome, New York MSA and the following licensees ("Affiliated Entities"): (1) NYNEX Mobile of New York LP ("NYNEX"), the licensee of the Elmira, New York MSA, (2) Binghamton MSA Limited Partnership, the licensee of the Binghamton MSA, (3) Pennsylvania 3 Sector 2 Limited Partnership, the licensee of Pennsylvania RSA No. 3; (4) Pennsylvania 4 Sector 2 Limited Partnership, the licensee of Pennsylvania RSA No. 4; (5) Rochester Telephone Mobile Communications, the licensee of the Rochester, New York MSA; (6) Syracuse SMSA Limited Partnership, the licensee of Syracuse, New York MSA; (7) St. Lawrence Seaway RSA Cellular Partnership,¹ the licensee of New York RSA No. 1; (8) New York RSA 2 Cellular Partnership, the licensee of New York RSA No. 2; (9) New York RSA No. 3 Cellular Partnership, the licensee of New York RSA No. 3; and (10) Ithaca Wireline Cellular Limited Partnership, the licensee of New York RSA No. 4.

² Petitioner has attempted to balance its desire to provide a thorough discussion of the issues against its desire to file as rapidly as possible. This quandary resulted from the late availability of the comments in the FCC Public Reference room, the late arrival of some mailed service copies of commentors, the non-arrival of other comments and the FCC Staff's unwillingness to extend the reply period. While FCC Staff indicated that the Commission would accept late filed replies, Petitioner has minimized the tardiness of its filing by contracting the length of its reply to respond only to the most significant of outstanding issues

³ See SigmaOne Communications Corporation's Opposition to Waiver Requests; KSI, Inc.'s Reply to Comments and Requests for Waiver; TruePosition, Inc.'s, Opposition to E911 Comments and Waiver Requests.

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Areas (RSAs)⁴ and does not stand to benefit financially from the development of either technology. UCN is solely interested in finding a solution or solutions to best meet its needs and deploy that technology or technologies as quickly as possible.⁵ UCN, of course, does not wish to delay life-saving technology. It filed a waiver request to ensure that the technology or technologies which are eventually utilized will work within a system *and* be compatible with other systems.

II. UCN's Petition for Waiver Does Not Subvert the 2001 Deadline for Provision of ALI via a Network Solution

Most of the parties opposing the waiver requests⁶ misconstrue UCN's intention in requesting the waiver. UCN has no desire to undermine to October 1, 2001 deadline but rather seeks flexibility to consider utilizing promising new technology utilizing the GPS satellite system. Thus, if reviewed calmly, UCN's waiver request does not eviscerate the 2001 deadline as suggested by some commenters; rather it maximizes UCN's planning flexibility by fostering the maturation of promising technology and its introduction into wireless telephony in a phased-in manner.⁷ While a waiver would alter the Commission's present schedule, a waiver, if granted, would usher in a new technology on a phased-in basis which is conceptually consistent with the Commission's prior pronouncement.

III. The "Roamer" Problem

KSI and other commenters were critical of the waiver requests, including that of UCN, which failed to provide a solution to the issue of how to provide Phase II ALI for a wireless subscriber without a location enabled handset who roams into a system where a carrier has employed a handset-based location solution. UCN candidly admits it does not have the solution at this time, but reiterates that the solution will have to arise out of industry efforts.⁸ Petitioner is baffled at criticism of an industry-wide approach, as historically E911 issues have been worked through on an industry-wide basis with the

⁴ See footnote 1.

⁵ UCN is concerned that network-based technology proponents such as KSI, SigmaOne and TruePosition may be attempting to utilize this proceeding to further private interests rather than the public interest. UCN concurs with the Commission that the success or failure of network or handset-based solutions should be determined by the marketplace and not by regulatory fiat.

⁶ See SigmaOne Communications Corporation's Opposition to Waiver Requests; KSI, Inc.'s Reply to Comments and Requests for Waiver; TruePosition, Inc.'s, Opposition to E911 Comments and Waiver Requests; Cell-Loc, Inc.'s Comments; Public Safety Associations' Comments.

⁷ Since 1996, the Commission has contemplated that ALI would be implemented by wireless carriers in three steps, rather than all at once. The first step, to be completed within one year after the effective date of the Order adopting rules in the proceeding, was for wireless carriers to design their systems so that the location of the base station or cell site receiving a 911 call from a mobile unit would be relayed to the PSAP. The next step, within three years of the Order, is for wireless service providers to include an estimate of the approximate location and distance of the mobile unit from the receiving base station or cell site. After five years, the location of the mobile unit must be identified within three dimensions, within a radius of no more than 125 meters. See Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676, 18686-18687 (1996) (*E911 First Report and Order*).

⁸ See also Advantage Cellular Systems, Inc. Request for Waiver at 3 (recognizing that the issue of roamer capability has yet to be satisfactorily addressed by equipment manufacturers).

oversight of the FCC. Petitioner believes that if a handset solution proves to be superior or the only workable technology in smaller markets, an industry-wide planning effort involving carriers and equipment manufacturers will be the only way a compatibility solution can emerge.

IV. UCN Has Satisfactorily Met Its Burden Under the WAIT Radio Standard

Some commenters opposing waivers incorrectly claim that the waiver requests failed to meet their burden. Under Section 1.3 of the Commission's Rules, the Commission is required to grant waivers "if good cause is therefore shown."⁹ As interpreted by the courts, this requires that a petitioner demonstrate that "special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest."¹⁰ UCN demonstrated that absent a waiver, promising handset-based technology would be precluded from consideration. UCN respectfully submits that the fact that promising new technology will not be considered absent a waiver constitutes "special circumstances."

Rule 22.119(a) allows the Commission to grant a waiver request if it is shown that the "underlying purpose of the rule(s) would not be served or would be frustrated by application in the instant case, and that a grant of the requested waiver would be in the public interest; *or* in view of the unique or unusual factual circumstances in the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."¹¹ UCN respectfully submits that both prongs of the waiver test are met by the facts surrounding this case. First, absent a waiver, the goal of provision of ALI may be frustrated, if a network-based solution cannot be achieved for small markets. Quite simply, a handset-based solution may prove to be the only solution for small markets, and thus failing to grant the waiver would effectively preclude consideration of this technology. Second, while even a few years ago it seemed unlikely that handset-based solutions would be feasible, it now appears that handset-based solutions may have a contribution to make in the provision of ALI. Under these circumstances, Petitioner respectfully submits that it would be contrary to the public interest to deny the waiver and thus preclude consideration of handset based technology.

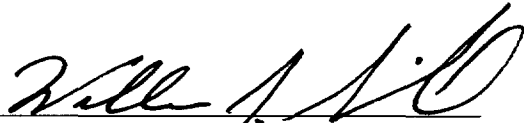
The FCC is to be commended for soliciting waiver requests several years in advance of the deadline. This has served to focus attention upon the issue at an early stage. Unfortunately, it makes it virtually impossible to present, at this time, a cornucopia of datum, deadlines, milestones and plans. Petitioner respectfully submits that the FCC has the discretion to take cognizance of this fact and to assess the waivers accordingly.

⁹ 47 C.F.R. § 1.3.

¹⁰ Northeast Cellular Tel. Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990); WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969); 47 C.F.R. § 1.3.

¹¹ 47 C.F.R. §1.925(b)(3)(i) and (ii).

Grant of the Petitioner's Waiver is in the public interest as it would provide carriers the flexibility of considering promising new technology and further the FCC's stated goal of remaining technologically neutral. Petitioner is not attempting to delay providing ALI; rather Petitioner hopes to find the most accurate and reliable method for provision of ALI in both its larger and smaller markets.

A handwritten signature in black ink, appearing to read "William J. Sill", written over a horizontal line.

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on behalf of Upstate Cellular Network
and its Affiliated Entities

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